In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 3567 of 2006

Date of Decision: October 9, 2006

Atam Bodh Sharma

…Petitioner

Versus

State of Haryana and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. Rakesh Bhatia, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana,
for the respondents.

JUDGMENT

M.M. KUMAR, J.

The short question which arise for determination in the instant petition is whether the respondents could withhold the payment of retiral benefits of the petitioner on the excuse that criminal proceedings in case FIR No. 40, dated 21.8.2003, under Sections 420/467/471/120-B IPC, registered at Police Station Vigilance Bureau, Rohtak, have been pending. Challenge in this petition filed under Article 226 of the Constitution is for quashing communication dated 15/22.2.2006 (P-7) declining payment of retiral benefits to the petitioner. The communication has been sent to the

petitioner in reply to the legal notice served by him through his counsel.

Brief facts of the case are that the petitioner was appointed on the post of Clerk on 21.8.1969 on ad hoc basis. His services were regularised as such in 1971. By the date of his superannuation, the petitioner had earned promotions and he was working as Superintendent. He was superannuated on 31.3.2005. However, on 18.5.2004 he was suspended when he was working as Superintendent. On 30.8.2004, a charge sheet was issued to him along with articles of charge and statement of imputation to which the petitioner filed his reply. He denied all the allegations by stating that the Vigilance Department had conducted investigation and had found him innocent. However, still a departmental inquiry was initiated against him and the petitioner continued to remain under suspension till his date of superannuation on 31.3.2005 and his pensionary benefits were withheld. On 14.12.2005, the petitioner through his counsel served a legal notice to the respondents for release of all pensionary benefits including commutation. In reply to the legal notice sent by the petitioner, a communication dated 15/22.2.2006 was received by him stating that on account of pendency of the criminal proceedings, no retiral benefits could be released to him. When the matter came up for consideration on 4.8.2006, the learned State counsel has apprised the Court that the inquiry report had been submitted to the competent authority and it was to take action in accordance with law and a period of four weeks was sought. When the matter came up for consideration today, learned State counsel has

placed on record a copy of the order dated 7.10.2006, showing that the disciplinary proceedings initiated against the petitioner stand dropped, which is taken on record as Mark-'A'. However, the only issue survive for determination is whether on the excuse of pendency of criminal proceedings, the pensionary benefits of the petitioner could be withheld.

Having heard learned counsel for the parties at a considerable length we are of the view that the instant petition deserve to be allowed. The learned State counsel has stated before us that in the criminal proceedings no challan has been presented so far against the petitioner, which would lead to the conclusion that in law no criminal proceedings are pending against him. It is well settled that departmental proceedings or criminal proceedings would be deemed to be instituted when the charges have been framed or challan is submitted to a Criminal Court. According to Rule 2.2(b) of the Punjab Civil Services Rules, Volume-2 Part-1 (as applicable to Haryana), the proceedings which are initiated before the retirement of a pensioner could culminate in the passing of order of recovery from pension of the whole or part of any pecuniary loss caused to Government if such a pensioner is found to be guilty of grave misconduct or to have caused pecuniary loss to the Government by misconduct or negligence during his service including service rendered on re-employment after retirement. Explanation added to Rule 2.2 (b) clarifies as to when departmental proceedings or judicial proceedings could be deemed to be instituted. The aforementioned explanation along with Note 1 and 2 reads as under:-

"Explanation. – For the purpose of this rule –

(1) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date; and

(2) judicial proceedings shall be deemed to have been instituted. –

(i) in the case of criminal proceedings, on the date on which the complaint is made or a challan is submitted to a criminal court; and

(ii) in the case of civil proceeding, on the date on which the plaint is presented or, as the case may be, an application is made to civil court.

Note 1. - As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay intimate the fact to the Accountant General.

Note 2. - In a case in which a pension as such is not withheld or withdrawn, but the amount of any pecuniary loss caused to Government is ordered to be recovered from the pension, the recovery should not ordinarily be made at a rate exceeding one-third of the gross pension originally

sanctioned including any amount which may have been commuted."

A perusal of the Explanation 2(i) makes it evident that judicial proceedings would be deemed to have been instituted on the date on which challan is submitted to a Criminal Court. In the present case it is conceded position that challan has not been presented so far against the petitioner although he had retired on 31.3.2005 and the FIR was registered against him on 21.8.2003. The principle laid down in the aforementioned explanation has been fully supported by the judgment of Hon'ble the Supreme Court in the case of **Union of India v. K.V. Jankiraman, (1991) 4 SCC 101**. The question before the Court was that whether for the purposes of sealed cover procedure mere contemplation of disciplinary inquiry or pendency of criminal proceedings could be deemed to be pending and it was held as under:-

" On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be

> sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. ……" (Emphasis added)

There is another reason for us to accept the prayer made by the petitioner. A Division Bench of this Court has taken the view that respondent cannot invoke Rule 2.2(b) on the excuse that criminal case has been pending till the trial Court has declared the pensioner as guilty. It is only after the decision of the trial Court that a competent authority has to apply its mind and then to conclude whether any punishment under Rule 2.2(b) is to be imposed. After quoting Rule 2.2(b) and the proviso 1, a Division Bench of this Court in the case of **Manohar Singh v. Punjab State Electricity Board, 2006 (2) RSJ 316**, has observed as under:-

> "12. A bare perusal of the aforesaid rule shows that it can be invoked if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his services. In the present case, the enquiry proceedings had already concluded against the petitioner and he had been punished by orders dated 16.11.2000 (Annexure P-6) and 26.8.2002 (Annexure P-9). Therefore, the petitioner is correct in his submission that no departmental proceedings were pending against him at the time of his superannuation on 31.5.2003. In our opinion, the respondents cannot invoke Rule 2.2(b) on the ground that the case in FIR No. 112 of 1999 is still

pending against the petitioner. The sine qua non for invoking Rule 2.2(b) is that the pensioner has been found guilty in a departmental or judicial proceeding which had continued after the superannuation of the employee. This view of ours finds support from the judgment of the Supreme Court in the case of High Court of Punjab and Haryana vs. Amrik Singh, 1995(1) SLR 236. In para 4 of the aforesaid judgment, it is observed as follows:-

> "4. Rule 2(2) of the Pension Rules, Clause (b) clearly mentions thus:
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> > "2(2)(b) The Government further reserves to themselves the right to withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and right of ordering the recovery from the pension of the whole or part of any pecuniary loss caused to Government. If, in a departmental or judicial proceeding, the petitioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement."
>
> A reading thereof clearly indicates that the disciplinary authority, consequent upon the result of the departmental or judicial proceedings, should record a finding whether the delinquent has

committed grave misconduct or negligence during the period of his service including the service rendered upon re-employment after retirement."

In the present case also there is no conclusion of the trial. Even the challan has not been presented. Therefore, the respondents merely on the basis of registration of the FIR on 21.8.2003, are not within their rights to withhold the pension or pensionary benefits of the petitioner. Therefore, the impugned order dated 15/22.2.2006 (P-7) is liable to be set aside.

For the reasons aforementioned, this petition succeeds. The communication dated 15/22.2.2006 is hereby quashed. It is declared that the petitioner is entitled to payment of retiral benefits. Let these benefits be released to the petitioner within a period of one month from today along with gratuity, leave encashment, GIS, suspension allowance, if any, etc.

The writ petition stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)
JUDGE

October 9, 2006
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